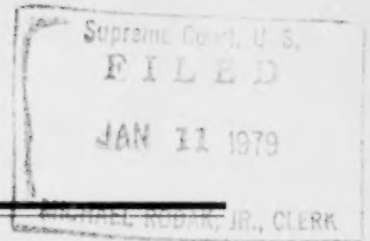


No. 78-819



In the Supreme Court of the United States
OCTOBER TERM, 1978

LAURENCE H. FROMMHAGEN, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF CLAIMS*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

WADE H. MCCREE, JR.
*Solicitor General
Department of Justice
Washington, D.C. 20530*

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Petitioner argues that the Court of Claims erred in granting the government's motion for summary judgment based on petitioner's delay in filing suit.

Petitioner was employed by the National Aeronautics and Space Administration (NASA) at Ames Research Center, Moffett Field, California, as a GS-14 research scientist from 1962 until September 6, 1968, when he was discharged because he was not performing at a level commensurate with his grade. He appealed the discharge to NASA, which, after a hearing, sustained the dismissal. Petitioner appealed to the Civil Service Commission, which affirmed his dismissal following a *de novo* hearing lasting 10 days. The Civil Service Commission Board of Appeals and Review affirmed the removal on April 12, 1971. Petitioner filed suit in the Court of Claims on April 1, 1977, seeking back pay from September 6, 1968, until September 14, 1974 (when he obtained other employment) or such other date as the court might determine.

The government moved for summary judgment on the basis that the suit was barred by laches and that, in any case, the administrative record, more than 9,000 pages in length, amply supported NASA's dismissal of petitioner. Petitioner cross-moved for summary judgment, alleging that he was mentally and physically incapacitated from filing suit from 1971 until 1977. The court granted the government's motion on the basis of laches (Pet. App. 1-9).

The decision of the Court of Claims is proper; it turns on the application of settled principles to particular facts, and petitioner presents no question warranting this Court's review.

Recognizing that petitioner had suffered a psychiatric disability, the court held that the incapacitation lasted from October 1972 to September 14, 1974, and that before and after those dates petitioner was competent to file suit (Pet. App. 5). The court noted that petitioner could have filed this action during the period between April 1971, when his administrative remedies were exhausted, and October 1972, when he became psychiatrically incapacitated. Similarly, petitioner recovered from his disability in September 1974 but waited more than two years to file this suit. The Court of Claims concluded that petitioner's delay resulted in prejudice, *i.e.*, "loss of evidence by death of witnesses, human forgetfulness, destruction of documents, etc. (Defendant points out that three key witnesses are dead.)" (Pet. App. 6). The court also held that "common fairness" to federal officials whose integrity was attacked demanded that the suit should have been brought "while memories were fresh" (*ibid.*). The Court of Claims found that petitioner's delays in filing suit "exceed[ed] by a wide margin the longest

delay the doctrine of laches will permit" (Pet. App. 9).¹ There is no reason to review that well-supported decision in this case.²

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JANUARY 1979

¹Even if petitioner's suit is not barred by the six-year statute of limitations on actions in the Court of Claims (see 28 U.S.C. 2501)—a defense that the government did not raise below—the doctrine of laches is nonetheless applicable. See, *e.g.*, *Gersten v. United States*, 364 F. 2d 850 (Ct. Cl. 1966).

²Petitioner argues that he was prejudiced by the Court of Claims' refusal to permit him to take a deposition or to submit depositions to supplement the record. In view of the size of the administrative record in this case, the court did not abuse its discretion in denying petitioner's motion to depose his former supervisor. Although petitioner requested a "trial" limited to the issue of laches (Pet. 7, 12), that request was inconsistent with his motion for summary judgment.